

Introduced by Senator Runner

February 22, 2005

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 896, as introduced, Runner. Child support.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would limit the child support that may be collected and the fees that may be charged by a private child support collector, require that entity to provide specified notices and disclosures to the child support obligee in a written contract and during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to local child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 9 (commencing with Section 5610) is
- 2 added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. This chapter shall be known and may be cited as the “Private Child Support Collection Act.”

5611. For the purposes of this chapter:

(a) “Child support obligation” means an obligation for the payment of financial support for a child under an order or writ issued by a court or other tribunal.

(b) “Obligee” means the person identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor’s amounts of ordered child support are due.

(c) “Obligor” means the person identified in an order for child support issued by a court or other tribunal as the individual required to make payment under the terms of a support order for a child.

(d) “Private child support collector” means an individual or nongovernmental entity who engages in the enforcement of child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any of the following:

(1) An attorney licensed to practice law in this state.

(2) A government agency of this or another state designated to serve as a Title IV-D agency in accordance with Part D of Title IV of the federal Social Security Act (42 U.S.C. Sec. 651 et seq.).

(3) A contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency of this or another state that is authorized by law to enforce a child support obligation.

5612. Any contract for the collection of child support between a private child support collector and an obligee shall be written in simple language, in at least 12-point type, signed by the private child support collector and the obligee and shall include all of the following:

(a) An explanation of the fees and an example of how they are calculated and deducted.

(b) An explanation of the nature of the services to be provided.

(c) The expected duration of the contract, stated as a length of time or as an amount to be collected by the collection agency.

(d) An explanation of the opportunities available to the obligee or private child support collector to terminate the contract or

1 other conditions under which the contract terminates, including
2 those specified in Section 5613.

3 (e) The mailing address, telephone numbers, facsimile
4 numbers, and Internet address or location of the private child
5 support collector for the purpose of communications between the
6 collection agency and the obligee or any authorized agent of the
7 obligee.

8 (f) Statements substantially similar to the following:

9 (1) "This contract terminates under certain circumstances. You
10 may request termination of this contract at any time prior to
11 midnight of the 15th business day after the date you sign the
12 contract. You may also request termination of this contract under
13 other circumstances that are described in Section 5613 of the
14 Family Code. To request termination of this contract, mail a
15 written, signed, and dated notice stating why you want to
16 terminate your contract to _____ (name of the private child
17 support collector) at _____ (address of the private child
18 support collector)."

19 (2) "This contract calls for us to collect money owed to you,
20 and not money owed to the county or state. If some of your child
21 support is owed to the county or state because you are receiving
22 or have received program benefits from CalWORKs or
23 Temporary Assistance to Needy Families, then we cannot collect
24 that money for you. If you start to receive program benefits from
25 CalWORKs or Temporary Assistance to Needy Families during
26 this contract, you must tell us."

27 (3) "_____ (name of private child support collector) is
28 not a governmental entity and charges a fee for its services."

29 5613. An obligee may, by written demand, terminate a
30 contract with a private support collector in any of the following
31 circumstances:

32 (a) Within 15 days of signing the contract.

33 (b) After any 12 consecutive months in which the private child
34 support collector fails to make a collection.

35 (c) Any time a state or local Title IV-D agency begins
36 collecting on behalf of the obligee, provided those collections are
37 completely independent of the private child support collector's
38 involvement in the case.

1 (d) If the private child support collector commits a material
2 breach of any provision of the contract or a material violation of
3 any provision of this chapter with respect to the obligee.

4 (e) For any other reason specified in the contract.

5 5614. A contract with a private child support collector shall
6 terminate automatically when the contract term has expired or the
7 contract amount has been collected.

8 5615. An obligee shall owe no fees after termination of a
9 contract with a private child support collector, except a private
10 child support collector may charge and collect its fee on child
11 support collected after the termination of a contract if the
12 payment is made to discharge, in whole or in part, a lien filed by
13 the private child support collector prior to the termination of the
14 contract.

15 5616. A private child support collector shall not enter into a
16 payment agreement with an obligor that forgives or that
17 compromises, in whole or in part, arrearages owed to the obligee
18 without the written consent of the obligee.

19 5617. A private child support collector shall not impose a fee
20 or charge for any child support payments collected solely through
21 the efforts of other persons or entities, and any fees retained shall
22 be promptly refunded to the obligee upon proof that other
23 persons or entities were solely responsible for the collection.

24 5618. A private child support collector providing services to
25 an obligee that has, or has had, a case pursuant to Part D of Title
26 IV of the federal Social Security Act with a county child support
27 agency shall provide notice of the contract to the county child
28 support agency.

29 (a) If the notice includes a power of attorney signed by the
30 obligee requesting the county child support agency to change the
31 payment address to that of the private child support collector, the
32 county shall honor the request for change of address, provided
33 nothing shall prevent the obligee from revoking the change of
34 address at any time.

35 (b) If the notice includes a power of attorney signed by the
36 obligee authorizing the county child support agency to release
37 payment records to the private child support collector, the county
38 child support agency shall release those records, including
39 information regarding amounts assigned to the county or state.

1 (c) A private child support collector who incorrectly states the
2 amount of child support to be collected is not in violation of this
3 chapter if the private child support collector has not received
4 payment records from the state or county child support
5 enforcement agency pursuant to this section.

6 (d) A private child support collector is not in violation of this
7 chapter if it collects any amount assigned to the county or state if
8 the private child support collector has not received payment
9 records from the state or county child support enforcement
10 agency pursuant to this section, provided the private child
11 support collector complies with subdivision (c) of Section 5619.

12 5619. (a) A private child support collector shall not collect
13 support assigned to the county or state pursuant to Section 11477
14 of the Welfare and Institutions Code, or to any other state.

15 (b) If funds contracted to be collected by the private child
16 support collector are subject to an assignment to the county or
17 state, the contract shall be suspended to the extent of the amount
18 subject to the assignment or in its entirety if the amount assigned
19 equals or exceeds the amount to be collected pursuant to the
20 contract.

21 (c) A private child support collector who receives notice that
22 child support has been assigned to the county or state shall, upon
23 receipt of the notice, cease any further collection activities
24 related to the assigned support and shall pay over to the assignee
25 any moneys subject to the assignment, including any fees
26 collected on those moneys that are collected after that notice and
27 that are in the possession or control of the private child support
28 collector.

29 5620. A private child support collector representing an
30 obligee with an open case pursuant to Part D of Title IV of the
31 federal Social Security Act shall ensure that all payments made
32 on behalf of the obligor are directed to the county child support
33 registry or state disbursement unit.

34 5621. (a) A private child support collector shall maintain
35 records of all child support collections made on behalf of, and
36 disbursed to, a client who is an obligee, including:

37 (1) The name of, and other identifying information relating to,
38 any obligor who made child support payments collected by the
39 private child support collector.

1 (2) The amount of support collected by the private child
2 support collector for the obligee.

3 (3) The date on which each amount was collected.

4 (4) The date on which each amount due the obligee was sent to
5 the obligee.

6 (5) The amount of the payment sent to the obligee.

7 (6) A copy of the order establishing the child support
8 obligation under which a collection was made by the private
9 child support collector.

10 (7) Records of all correspondence between the private child
11 support collector and an obligee and obligor in a case.

12 (8) Any other pertinent information relating to the child
13 support obligation, including any case, cause, or docket number
14 of the court having jurisdiction over the matter and official
15 government payment records obtained by the private child
16 support collector on behalf of, and at the request of, the obligee.

17 (b) The records required under this section shall be maintained
18 by the private child support collector for a period of four years
19 from the date of the last child support payment collected by the
20 private child support collector on behalf of an obligee.

21 (c) A private child support collector shall safeguard case
22 records in a manner reasonably expected to prevent intentional or
23 accidental disclosure of confidential information pertaining to the
24 obligee or obligor, including providing necessary protections for
25 records maintained in an automated system.

26 (d) A private child support collector shall timely inform clients
27 of all legal orders, hearings, and notices intended for the client
28 that have been sent to the private child support collector by a
29 government child support enforcement agency.

30 (e) A private child support collector shall provide to an
31 obligee, via telephone or secure Internet access, or by mail at the
32 obligee's request, the information maintained pursuant to
33 paragraphs (1) to (5), inclusive, of subdivision (a).

34 5622. A private child support collector shall not collect or
35 attempt to collect child support by means of any of the following
36 conduct:

37 (a) Using, or threatening to use, physical force or violence or
38 any criminal means to cause harm to the person, the reputation,
39 or the property of any person.

1 (b) Threatening that the failure to pay a child support
2 obligation will result in an accusation that the obligor has
3 committed a crime where the accusation, if made, would be false.

4 (c) Communicating, or threatening to communicate, to any
5 person the fact that an obligor has engaged in conduct, other than
6 the failure to pay a child support obligation, which the private
7 child support collector knows or has reason to believe will
8 defame the obligor.

9 (d) Threatening to any person that nonpayment of the child
10 support obligation may result in the arrest of the obligor or the
11 seizure, garnishment, attachment, or sale of any property or the
12 garnishment or attachment of wages of the obligor, unless that
13 action is in fact permitted by the law.

14 (e) Threatening to take any action against the obligor which
15 the private child support collector has no authority to take.

16 (f) Using obscene or profane language.

17 (g) Placing telephone calls without disclosing the identity of
18 the private child support collector.

19 (h) Causing expense to any person for long distance telephone
20 calls, telegram fees, or charges for other similar communications,
21 by misrepresenting to that person the purpose of a telephone call,
22 telegram, or similar communication.

23 (i) Causing a telephone to ring repeatedly or continuously to
24 annoy the person called.

25 (j) Communicating, by telephone or in person, with the obligor
26 with a frequency that is unreasonable and constitutes harassment
27 to the obligor under the circumstances.

28 (k) Communicating with the obligor's employer regarding the
29 obligor's child support obligation unless such a communication
30 is necessary to the collection of the obligation, or unless the
31 obligor or his attorney has consented in writing to such
32 communication. A communication is necessary to the collection
33 of the obligation only if it is made for the purposes of verifying
34 the obligor's employment, locating the obligor, or effecting
35 garnishment of the obligor's wages.

36 (l) Falsely representing that any person is an attorney or
37 counselor at law.

38 (m) Falsely representing that any private child support
39 collector is vouched for, bonded by, affiliated with, or is an

1 instrumentality, agent, or official of any federal, state, or local
2 government or any agency of federal, state, or local government.

3 (n) Falsely representing that a private child support collector is
4 a consumer reporting agency or falsely representing that
5 information concerning an obligor's failure or alleged failure to
6 pay a child support obligation has been, or is about to be, referred
7 to a consumer reporting agency.

8 (o) Initiating communications, other than statements of
9 account, with the obligor with regard to the obligation, when the
10 private child support collector has been previously notified in
11 writing by the obligor's attorney that the obligor is represented
12 by that attorney with respect to the obligation and the notice
13 includes the attorney's name and address and a request by the
14 attorney that all communications regarding the child support
15 obligation be addressed to that attorney, unless the attorney fails
16 to answer correspondence, return telephone calls, or discuss the
17 obligation in question. This subdivision does not apply if prior
18 approval has been obtained from the obligor's attorney, or if the
19 communication is a response in the ordinary course of business
20 to an obligor's inquiry.

21 5623. (a) In addition to any other remedy provided by this
22 chapter, a person may bring an action for any of the following:

23 (1) Injunctive relief to enjoin or restrain a violation of this
24 chapter.

25 (2) Actual damages incurred as a result of a violation of this
26 chapter.

27 (b) A person who prevails in an action brought pursuant to this
28 section is entitled to recover court costs and reasonable attorney's
29 fees.

30 (c) On a finding by a court that an action pursuant to this
31 section was brought in bad faith or for purposes of harassment,
32 the court shall award the defendant attorney's fees reasonably
33 related to the work performed and costs.

34 5624. (a) A violation of this chapter is a deceptive trade
35 practice under the laws of this state and is actionable under those
36 laws.

37 (b) This chapter does not affect or alter a remedy at law or in
38 equity otherwise available to an obligor, obligee, governmental
39 entity, or other legal entity.

1 (c) A private child support collector does not violate this
2 chapter if the action complained of resulted from a bona fide
3 error that occurred notwithstanding the use of reasonable
4 procedures to avoid the error.

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